Supreme Court, U.S.
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NO. 87-1530

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

EASTERN PUBLISHING AND ADVERTISING, INC.,
(A Close Corporation)
T/A "ARMED FORCES NEWS,"

Petitioner,

v.

CHESAPEAKE PUBLISHING AND
ADVERTISING, INC.,
(A Close Corporation)
T/A "THE MILITARY NEWS," KAREN A. HORN;
KIMBERLY J. HORN; CAROL WHITNEY ANSEL;
DELLA LEMMINGS; ALRED E. CLASSINGS, III;
RAYMOND J. CANNOLES; and LOUISE MARTINS,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITIONER'S REPLY BRIEF

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QUESTIONS PRESENTED BY RESPONDENTS

1. Question number one by Respondents in their brief simply poses a query as whether the Court below had correctly determined the complaint to have failed to allege facts supporting the claim that the Federal Copyright Act, 17 U.S.C. ss 101. et seq. protected the newspapers.

Since the Circuit Court below actually decided the copyright issues upon a finding that the Petitioner did not state a claim, at time of filing, solely because it did not allege a then ongoing cloned production of each item, the question of Respondents misses the point at issue.

2. Questions numbers two and three presented by Respondents pose no problem, however, the omitted Affidavit of Facts and Motion paper filed separately by Petitioner at the time the Complaint was filed in District Court is appended for consideration of all Petitioner's filing

documents by the Court since Respondents' brief only appended the Amended Complaint itself and the questions presented reflect on the filings.

PARTIES TO THE PROCEEDING

Since all parties are listed in the Petition, a repeated listing is omitted pursuant to Rule 34.4.

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PETITIONER'S REPLY BRIEF

REASONS FOR GRANTING THE WRIT

The Respondents (Brief in Opposition, p. 2) reason that the Petitioner has not demonstrated a conflict in the circuits or

an inappropriate treatment of the federal R.I.C.O. question. Petitioner did not cite the serious conflict and division of the circuits but Petitioner did not thereby sub silentio admit none existed. The original brief of Eastern Publishing set out the conflict with relevant decisions only of this Court. Eastern claimed that a case by case analysis now compelled by the circuit court requiring multiple schemes was contrary to this Court's holdings of Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 606, 105 S.Ct., 3291. (Brief pp. 22-25). Petitioner here addresses that serious conflict and responds to the copyright issue.

REPLY ARGUMENT

I.

THE COURT BELOW DID NOT DETERMINE A VALID COPYRIGHT FAILED TO EXIST FACTUALLY, BUT THAT A FATAL LACK OF THE PREDICATE JUDICIAL ELEMENT OF CONTINUING CLONED PRODUCTION EXISTED.

Petitioner will not directly respond to the sole copyright question posed by

Respondents but will instead respond to the copyright argument points for clarity of the federal issues. Petitioner, however, would note that Respondents' question simply asks whether the Court of Appeals had correctly determined the Amended Complaint failed to supply facts upon which a finding could be made that Petitioner's Veteran's publications were protected by the federal Copyright Act, 17 U.S.C. ss 101, et seq., a point never addressed. First, the statute itself gives such protection to "compilations." Second, the Registrar of Copyrights had actually issued registration copyright certificates (See Pet. A-3, 4). Third, the Circuit Court made its ruling based upon the assumption that the publications having had registration certificates were copyrightable, Pet. A-9.

In contrast to their question, Respondents' argument focuses upon three different points: (1) inexcusable lack of

affixed notice; (2) omission of essential elements of infringement activity; and (3) lack of alleging essential elements of copyright compilation infringement. The latter two arguments appear to be similar claims.

Insofar as the Respondents have neither posed their question nor their argument points to oppose Petitioner's questions (I, II and III) or its argument (Point I), it would seem that Respondents sub silentio do not dispute arguments presented on those issues that both lower courts had erred.

II.

THE CIRCUIT COURT ACTUALLY FOUND THAT THE REQUIRED ACTS WERE TAKEN BY PETITIONER AND THUS FAILURE TO PLACE NOTICE DID NOT PLAY THE DECIDING PART IN EITHER DECISION BELOW.

Respondents mistakenly view 17 U.S.C. ss 405(a) as invalidating all copyrights for works which are in some quantity distributed without affixed notices on them unless excused. Thus, if all copies of the two particular newspaper issues

were originally printed without notice prior to discovery of the omission and its effect, then, no matter in what quantity distributed, copyright protection was lost forever for that reason without factual findings as whether they constituted a "relatively small number of copies." They then rely upon a failure to allege facts showing those efforts to affix notice on the subsequently distributed copies. This is a considerably different presentation from their argument summary upon a failure to affirmatively place notice not on those to be later distributed but upon those previously distributed.

The Circuit Court noted the District Court comment that failure of previously distributed copies to contain statutory notice could be excused but the Circuit Court went beyond the right to be excused and stated that the trial court had also, in dictum, declined to excuse lack of notice (see p. A-110 of Pet.) due to lack

of the necessary cloned production. Petitioner has reviewed the trial opinion and cannot ascertain where such a determination was made. In any event no such factual finding was made by the trial court.

Similarly, the Circuit Court simply determined that the trial court dicta, was actually an essential element and the lack there fatal. (See p. A-31, of Pet.). The Circuit Court acknowledged the complaint had alleged infringing conduct (Pet. pp. A-4,5), contrary to Respondents' brief.

The Respondents also err when they argue that the Complaint fails to allege reasonable efforts were made to attach notice to those copies distributed after receiving notice of omission. The short answer is that such allegations are not compelled to be in the complaint. Moreover, it had alleged no further distribution occurred without notice and that

formal notice actually had been given to Respondents even as to copyright registration. (Comp. paras. 18, 19 and affidavit set out herein as appendix and see opinion below, Pet. pp. A-3, 4, 11-12.)

III.

A VALID COPYRIGHT WAS CLAIMED

The Respondents in sub-part B of their brief claim a neglect "to allege the most important of elements in a copyright infringement action; that is, a valid copyright." The federal copyright law itself, however, answers this. A copyright exists the instant that the publication becomes "fixed," 17 U.S.C. 101, 103. And when it is thereafter registered, as here, the author can bring infringement claims. The Respondents argue a point that was not decided below, that of copyright existence vel non.

A certificatre is prima facia evidence of the copyrights validity. Hasbro Bradley v. Sparkle Toys, 780 F.2d at 192.

IV.

IN APPARENT RECOGNITION OF THE SEVERE DIVERGENCE OF APPELLATE VIEWS ON THE CHARACTERISTICS NECESSARY TO ESTABLISH A R.I.C.O. PATTERN THIS COURT HAS GRANTED CERTIORARI IN A CASE WITH SIMILAR ISSUES AND IS URGED TO CONSIDER THIS POINT HERE.

The Respondents rely upon the decision below and of International Data Bank v. Zepkin, 812 F.2d 149 (CA4-1987). Both decisions fail to articulate guidelines and they simply dilute this Court's opinions in Haroco, supra and Sedima, supra. Both also limit R.I.C.O. claims to a case by case review as well as rejecting multiple fraudulent transactions, HMK Corp. v. Walsey, 828 F.2d 1071 (CA4, 1987) over a period of four (4) years duration. See also Walk, et al v. The Baltimore and Ohio Railroad, et al, No. 87-35685 decided 5/31/88 (CA-4).

Yet some circuits do, in fact, adhere to this Court's pronouncements in Haroco and Sedima, if not specifically, then, at least in gross. See United States v. Iannielo, 808 F.2d 184, 189-93 (CA2,

1986), Bank of America v. Touche Ross & Co., 782 F.2d 966 (CA11, 1986). One circuit requires ongoing long periods for creation of fictional multiple single schemes. Morgan v. Bank of Waukegan, 804 F.2d 970 (CA 7, 1986). Meanwhile the Eighth Circuit totally rejects a single scheme involving continuity and multiple acts. Superior Oil Co. v. Fulner, 785 F.2d 252 (CA8, 1986).

Most recently this Court has granted certiorari in H.J. Inc. v. Northwestern Bell Telephone Co., 829 F.2d 648 (CA 8) concerning the question posed there as to whether multiple acts in a wide variety of settings over a long period but in a single alleged scheme constituted a R.I.C.O. pattern. This is essentially the question posed here and the one scheme holdings of the Fourth Circuit. This Court is urged to review this Petition on the question of a R.I.C.O. pattern in tandem with the Court's review of the

petition by H.J., Inc., supra. in No. 87-1252.

Petitioner also appends its Affidavit and motion paper separately filed in the District Court, but omitted by Respondents' brief, to aid the Court's review of all factual allegations before the District Court.

CONCLUSION

This Petition brings before the Court two separate and distinct, but important, issues having substantial impact upon two aspects of federal law.

Thus the Petitioner urges the Court to consider both of the substantial federal issues presented prior to disposition of either of them separately.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EASTERN PUBLISHING AND ADVERTISING, INC. (A CLOSE CORPORATION), T/A "ARMED FORCES NEWS," 619-A South Marlyn Avenue Baltimore, Maryland 21221	*	
Plaintiff,	*	CIVIL ACTION NO.: JF14-86-1653
vs.	*	
CHESAPEAKE PUBLISHING AND ADVERTISING, INC. (A CLOSE CORPORATION) T/A "THE MILITARY NEWS," 6 North Taylor Avenue Baltimore, Maryland 21221, ET. AL.,	*	AFFIDAVIT
Defendants	*	

* *

AFFIDAVIT

I, JOHN EDWARD TUCHTON, hereby certify that I am an adult, a resident of this District in Baltimore County, Maryland and that I am competent to testify. I am giving this affidavit upon personal knowledge as to those facts of which I am personally aware and cognizable of, and of those facts I have received information, I verily believe them to be true, much of which I have obtained factual verification.

I am the President and sole operating officer and the sole stockholder of the Eastern Publishing and Advertising, Inc., corporation at 619-A South Marlyn Avenue, Baltimore, Maryland 21221. The corporation creates and prints by volume and issue number a quarterly newspaper geared and directed to being read and received by military personnel and their families and dependents. The title of which is "Armed Forces News." This corporate publisher has, in printing this newspaper over several years, created a clientele of advertising customers in and around military installations segregated to area which generally conform to state boundaries.

This corporation creates original works in advertising, artwork, art form, configuration, stroke, drawings, selected wording and composition as well as a selected compilation of government issued and authorized reports of interest to such

readers. Those works are selected, compiled, arranged and highlighed and captioned as an original "compilation." The two types of fixed works are then wedded into a total "fixed work" which is the resulting printing "Flat." This "Flat" is then printed in quantity and distributed to the regions military bases and to the advertising customers therein for confirmatory copies. All original creations are fixed works for hire and entitled to copyright.

Prior to each quarterly issue the company has its personnel contact its prior advertising purchasers in the area of intended distribution and seek the renewal advertising of the company as created and with its artwork, etc., and obtain a contract for renewal printing that advertising.

On or about March 22 and March 27, 1986, the corporation, utilizing its original copyright fixed works and the

original compilation copyright fixed work, and having contracted with its advertising purchasers in the State of Virginia and District of Columbia, prepared and created the "fixed works" of "Volume V, Number III, and Vol. VI, No. IV in a two-part newspaper printing "Flat" of the Armed Forces News. It was first printed on 3/22/86 and 3/27/86 and thereafter published to that region's military bases and the advertisers.

On or about April 14, 1986 the Defendant, "Chesapeake Publishing and Advertising, Inc.," copied Plaintiffs fixed works and upon information and belief caused the assembled copies to be taken to the "Master Graphics" company at 3 Riverton Road, Baltimore, Maryland 21220 and fixed into a pasted and waxed newspaper "Flat" with a new title of "The Military News." All pagination and Plaintiffs' markings and identifications were removed and the product was made so

as to be without printer's identity. On or about April 21, 1986, the "Chesapeake Publishing and Advertising, Inc." took the infringing "Flat" to the "Carroll County Times Printing Co.," at 201 Railroad Avenue, Westminster, Maryland 21157 and had the infringing "Flat" multiple printed into several hundred copies and publicly displayed as their own and published thereafter into the State of Virginia to the military installations and advertising customers and potential advertising customers. The photocopying, cutting out and pasting together of the individual fixed works and the compilation of fixed works was done against both Vol. V, No. III and Vol. VI, No. IV of Plaintiff's newspaper. Copy attached to Motion for Temporary Restraining Order.

On or about 4/2/86, Defendants Karen Horn, Kimberly Horn, Carol Whitney Ansell and Della Lemmings were utilized as independent contractors by Plaintiff. They

all terminated their contracts on Friday, 4/11/86. On Monday, 4/14/86, they all were working for Defendant, "Chesapeake Publishing and Advertising, Inc." and had already leased and opened the premises at 6 North Taylor Avenue, Baltimore, Maryland 21221 for business. At that time they had the business telephones already installed and converted with Chesapeake and Potomac Telephone Co. service extended to number (301) 686-1665, inter alia. A deposit and checking account numbered 421-257-7 with printed company checks was established with the Essex Office of the Maryland National Bank. In addition the company applied, on 4/29/86, for and was issued United States Postal Bulk Mailing Permit numbered 1042 for use in publication.

Also, on 4/2/86 Defendants Alfred E. Clasing, III, Raymond J. Cannoles and Louise Martins executed Articles of Incorporation creating the Defendant company themselves and made themselves the sole

directors of Defendant "Chesapeake Publishing and Advertising, Inc." They filed the Articles of incorporation on 4/4/86 with the State Department of Assessments and Taxation with corporate registration number D-2107894.

The corporate papers designate the organization and creating subscribers as addressed at 818 Eastern Boulevard, Baltimore, Maryland 21221 with one of its purposes being to publish general and special interest newspapers and to sell advertising therein. See certified copy attached to Motion for Temporary Restraining Order filed herewith. Defendant company had no lawfully owned advertising to sell.

Also, on 4/2/86, at execution, the documents designated the principal offices to be located at 6 Taylor Avenue, Baltimore, Maryland 21221, which was not then an established newspaper office but which is the premises later opened on 4/14/86.

The Resident Agent of the corporation was designated as Karen A. Horn who was contracted with Plaintiff and had daily access to Plaintiff's copyright materials, but here giving her address also as 6 Taylor Avenue, Baltimore, Maryland 21221.

The Defendants, upon information and belief had no original advertising works to use as example and display and to engage in sales thereof, which was lawfully possessed and owned by them, from April 1, 1986 (and prior thereto) through and including April 21, 1986 and thereafter. They did, however, possess and infringe Plaintiffs' copyrights as follows, inter alia using the newspapers of Plaintiff by displaying them to the public, et. cet.

1. Plaintiff possessed the original coypright for the "fixed" advertising of "A Bit of Britain," 710 Gibbon Street, Olde Town, Alexandria, Virginia 22314. On 2/25/86 Ms. Liz Farrell, owner, contracted for the printing of the published adver-

tising held by Plaintiff for $85.00 in a written contract. Plaintiff created, printed and published that "fixed" copyright advertisement in Vol. V, No. III, on 3/27/86 as agreed in the "Armed Forces News" on page 12 Insert. Payment was by check No. 1157. Plaintiff's copy of the advertising contract was removed for Plaintiffs' customer file, along with numerous other customer contacts.

On 4/23/86, Plaintiff had its personnel contact Ms. Farrell by telephone to determine if she wished to renew the same prior quarterly advertising cited above in the next issue of Armed Forces News. Ms. Farrell stated she had already renewed her ad and had paid for it. It had not been renewed by Plaintiff and this was told to Ms. Farrell. Ms. Farrell stated they were renewing her ad but at our request she had to make her check payable to "Military News." She was told we were not The Military News and it was not our renewal.

On 5/9/86 Ms. Farrell was interviewed by our investigator and she stated the above as well as that she was led to believe that this contract by Military News was merely renewing the ad she had with us but there had been a price increase to $96.50. She then produced check No. 1238 dated 4/17/86 in that amount payable to Military News. Copy of check also received together with copy of prior contract taken from Plaintiff. The check and Plaintiff's prior contract attached to Motion for Temporary Restraining Order herein. It had been deposited to the above cited Maryland National Bank account of Defendant company. Ms. Farrell also produced a written receipt dated 4/17/86 (4 days before infringing advertising publication) for $96.50 from The Military News. Copy attached to Motion for Temporary Restraining Order.

The infringing of Plaintiff's copyright advertisement was for the future

displaying upon information and belief Plaintiffs' issue of the Armed Forces News to the public as their own without alteration and including all of Plaintiffs fixed protected work therein seeking and attempting to receive payment for reproduction by infringement.

2. Plaintiff also possessed the original copyright for the advertising of "Kiln Korner Ceramics," 8816 Brentsville Road, Manassas, Virginia 21111. The operator, Erma Jean Bonner, contracted with Plaintiff for published advertising in the same paper and paid $45.00 for it. Plaintiff created, printed and published that "fixed" copyright advertisement in Vol. VI, No. IV on page 27 as above.

On 4/23/86, Plaintiff had its personnel contact her for renewal and learned that she had previously renewed it also. After notifying her that no such renewal had been made with Plaintiff she took out her receipt and discovered it was paid at

their direction to the Military News. She was advised it was not our paper and was not our renewal.

On that date, she telephoned the number of Defendant at (301) 686-1665 from the receipt and requested return of her money. She spoke with the same girl, by voice and her identification, who had solicited the renewal by telephone. Upon giving her the further information that she had also called Quantico Naval Base for information on the Military News and had been informed they had never heard of the paper. She also told the girl that she thought she was renewing her advertisement in the "Armed Forces News," for an additional three months in the "Armed Forces News," with the same ad she previously used.

The girl at the Military News office informed her that she shouldn't request a refund since Ms. Bonner must have been talking on her telephone to the wrong

department. She informed her that the Military News and the Armed Forces News were the same company and that Ms. Bonner must have talked to the "Sales Department," and she was now speaking with the "Publishing Department." Ms. Bonner still demanded her money back which the girl agreed to do.

On 5/9/86 she gave an interview to our investigator and she re-stated the above facts as well as that a person named "Della" appeared at her store to pick up her ad renewal check and had given her a receipt for it on 4/16/86 (5 days before advertising printing) and had said it was for quarterly renewal of her prior advertising. This was after a telephone call she had received two or three days earlier from the identified solicitor (which would have been Monday, 4/14/86 or before).

Also, on 4/23/86, Ms. Bonner had demanded return of her payment from the girl at The Military News. She was

informed it would be returned the next day, 4/24/86. Not having received refund in a week and a half she again telephoned the same girl at The Military News who stated it had been mailed and must have gotten lost in the mail. She would put a stop payment and get her a new check. She had to take the check to the hospital since her boss, who signs checks, was in the hospital.

At that time, upon information and belief, Karen A. Horn was in the hospital.

On Monday, 5/12/86, Chesapeake Publishing and Advertising, Inc. check No. 151 dated 5/9/86 drawn on the above account and bank signed by Karen A. Horn for $45.00, was received by Ms. Bonner noted "Returned advertising check." A copy of the Kiln Korner check, The Military News receipt and the Chesapeake Publishing refund check attached to the Motion for Temporary Restraining Order.

The infringing of Plaintiff's copyright advertisement was for the future displaying, upon information and belief of Plaintiff's exhibited and published ad of the Armed Forces News without alteration and including all of Plaintiff's fixed protected work therein seeking and attempting to receive payment by infringement.

3. Plaintiff's personnel contacted "Alexandria Toyota, Inc.," 1707 Mount Vernon Avenue, Alexandria, Virginia to renew their $500.00 full page ad as printed on page 32 of Plaintiff's Vol. V., No. III, and learned that it had been renewed and paid for. Plaintiff did not renew it or receive money payment. The Military News received the payment and renewal and unlawfully printed the ad in Vol. 1, No. 1 at page 11 without permission and which was an infringement of copyright.

4. "Cronin's Pest Control," 1276 Cronin Drive, ad for $140.00 on page 8 Insert of Plaintiff's Vol. VI, No. IV contacted for renewal in Defendants' newspaper.

5. "Hamilton Jewelers," 13428 Jefferson Davis Highway, Woodbridge, Virginia 27191 in Plaintiff's Vol. VI, No. IV at page 18 Insert contacted for renewal in Defendants' newspaper.

6. A sample of the other infringing publication advertising contained in the two issues and unlawfully printed in Defendants' paper are:

A. "Auto Bumper Plating," 3806 S. Four Mile Run Road, Arlington, VA 22206; Our page 28 of Adv. Insert Vol. V, No. III, - their page 6 of Vol. 1, No. 1.

B. "Jewel Gallery," Our Vol. V., No. III, p. 7 of Plaintiff - their page 6 of Vol. 1, No. 1.

C. "Crossed Canoes, Inc.", Vol. V, No. III p. 7 of Plaintiff - their page 6 of Vol. 1, No. 1.

D. "Tony's Gulf Service" ad from page 11, Vol. V, No. III of Plaintiff's paper, printed on page 2, Vol. 1, No. 1 of Defendants' paper.

E. "Shirlington Texaco, Inc." ad from page 25 Insert, Vol. V, No. III of Plaintiff's paper, printed on page 2, Vol. 1, No. 1 of Defendant's.

F. "L.C. Reynolds Antiques" ad from page 25 Insert, Vol. V, No. III, of Plaintiff's paper, printed on page 2, Vol. 1, No. 1 of Defendant's.

G. "Gill's Auto Body"; "Pizza Convection" from Plaintiff's page 8, Vol. V, No. III, on page 8, Vol. 1, No. 1 of Defendant.

I have reviewed Defendant's 12 page newspaper, Vol. 1, No. 1 and its thirty-eight (38) major advertisements and six (6) public service advertisements as well

as its seventeen (17) government releases and can find none that was not previously printed in Plaintiff's publications.

On May 9, 1986, within 90 days of the first publication of Volume V, Number III by Plaintiff, I prepared and executed and filed Plaintiff's Application for Copyright of all the fixed works therein and the publication itself with the Register of Copyrights, Library of Congress together with deposit of two (2) copies thereof and payment for registration therefore.

On May 20, 1986 within 90 days of the first publication of Volume VI, Number IV, by Plaintiff I prepared and executed and filed Plaintiff's Application for copyright of all the fixed works therein and the publication itself with the Register of Copyrights, Library of Congress together with deposit of two (2) copies thereof and payment for registration therefore. Copies attached to Motion for

Temporary Restraining Order.

I further state that I am the chief supervisory official of Plaintiff and that I am familiar with the books and records of Plaintiff. Those records show that no Defendant had any permission or license from Plaintiff to print, copy, display, sell or publish to the public any portion of Plaintiff's copyrighted materials as contained in Defendant's public displays, printing, sales and advertising.

Those records show that Plaintiff has lost the income, proceeds, and profits of the copyright materials listed here and of all the infringed materials and as a result is suffering great and immediate harm and injury to its business and copyrights.

I further state that I have been informed and believe that the Defendant corporation with certain of its employees have compiled an additional printing of a newspaper and have had it taken to West-

minster Press for multiple printing. Such new issue may have contained Plaintiff's customers and their advertising.

Further, upon information and belief certain Defendants recently possessed and were using telephone directories for the State of Florida and the City of Tampa where Plaintiff also published copyright advertising for its customers.

Upon information and belief it is therefore alleged that the monies received by "Chesapeake" from the advertising, display, from Plaintiff's customers, and copyright use, was placed in a bank account and those funds were used to solicit customers, prepare print and publish other materials by "Chesapeake" without which the enterprise could not have survived. Further, the present business assets are derivative of the proceeds obtained by Defendants as herein alleged upon information and belief.

Affiant has read the matters and

facts set forth in the Complaint herein and the exhibits attached to the Motion for Temporary Restraining Order, and upon information and belief, of their truth, together with those matters of which I have personal knowledge.

On May 20, 1986 I have written and caused to be delivered to the Defendant Corporation and its resident agent at 6 North Taylor Avenue, Baltimore, Maryland 21221 a letter putting them on notice of Plaintiff's copyright acts and rights.

I hereby declare and affirm under the penalties of perjury that the matters and facts set forth in this Affidavit and the Complaint are true on the basis first above written.

Done this 22nd day of May, 1986.

/s/_____

JOHN EDWARD TUCHTON

Affiant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EASTERN PUBLISHING AND ADVERTISING, INC. (A CLOSE CORPORATION), T/A "ARMED FORCES NEWS, 619-A South Marlyn Avenue Baltimore, Maryland 21221,	*	
Plaintiff	*	CIVIL ACTION NO.:
vs.	*	
CHESAPEAKE PUBLISHING AND ADVERTISING, INC. (A CLOSE CORPORATION), T/A "THE MILITARY NEWS" 6 North Taylor Avenue Baltimore, Maryland 21221, ET. AL.,	*	
Defendants	*	

* *

PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff moves this Honorable Court for a temporary restraining order (1) enjoining Defendants, and each of them, from mailing to any advertising customers of Plaintiff's and to addressee on Plaintiff's house or mailing list; (2) enjoining Defendants, and each of them, from telephoning and soliciting any such advertising customer of Plaintiff and listed

person; and (3) requiring Defendants, and each of them, (a) to deposit in escrow accounts in banks in this District all funds collected, or which may be collected as a consequent of or a direct result of or derived from any and all mail or telephonic or in person solicitations of advertising from April 1, 1986 henceforth to any such advertising customer or addressee of Plaintiff and (b) to maintain records of all such receipts and deposits, contracts, and produced, printed or published advertising by Defendants.

Plaintiff further moves this Honorable Court for a Temporary Restraining Order impounding all infringing works which infringe Plaintiff's copyrights together with all species produced and within their custody or control together with all negatives and property used in such infringement and documents, contracts, checks, receipts, correspondence and memoranda concerning acts involved in

such infringement and reproduction as well as all copies of Plaintiff's newspaper of any issue in their possession, custody or control. It is requested that such place of impoundment be made available to Plaintiff for inspection and cataloging of such goods.

Plaintiff further moves this Honorable Court for a Temporary Restraining Order impounding the corporation's stock ledger, charter documents, minute books, and all other corporate documents and prohibiting any Defendant from altering, amending or removing or destroying the same.

1. Plaintiff will suffer irreparable injury unless Defendants are so restrained pending final disposition by this Court. The issuance of a temporary restraining order would serve the public interest. Plaintiff is likely to succeed on the merits in the final disposition of this action.

2. Plaintiff has notified Defendants that Plaintiff would file on this date Plaintiff's Application for Temporary Restraining Order, as more fully set forth in the attached Certificate of Service.

3. The reasons Plaintiff offers in support of its request for Temporary Restraining Order are:

A. Upon information and belief the matters and facts thereof and the allegations presented thereon in Plaintiff's Complaint which is incorporated herein and filed herewith.

B. The matters, facts and allegations presented in the Affidavit of John Edward Tuchton, on behalf of Plaintiff which is incorporated herein and filed herewith.

C. The following referred to exhibits attached hereto and incorporated herein.

(1) Photocopy of certain pages of Plaintiff's newspaper designated as Volume

V, Number III as presenting Plaintiff's prior copyright fixed works infringed by Defendant corporation newspaper as Exhibit Number One herein.

(2) Photocopy of certain pages of Plaintiff's newspaper designated as Volume VI, Number IV, presenting Plaintiff's prior copyright fixed works as Exhibit Number Two herein.

(3) Photocopy of Application for copyright registration of Plaintiff's newspaper Volume V, Number III, executed May 8, 1986, and transported to and filed with the Register of Copyrights on May 9, 1986 as Exhibit Number Three herein.

(4) Photocopy of Application for copyright registration of Plaintiff's newspaper Volume VI, Number IV, executed May 19, 1986 and transported to and filed with the Register of Copyrights on May 19, 1986 as Exhibit Number Four herein.

(5) Photocopy of Defendant's infringing newspaper with infrignements of

copyrights as Exhibit Number Five herein.

(6) Photocopy of Certified Articles of Incorporation of Defendant company as Exhibit Number Six herein.

(7) Photocopies of "Kiln Korner Ceramics" documents including (a) check no. 2784 of 4/16/86 to The Military News $145.00 for advertising (b) receipt from The Military News for such payment from "Della" (c) Chesapeake Publishing check 151 as returned advertising check, and (d) copy of front of envelope returning check postmarked 5/9/86, as Exhibits Number Seven herein.

(8) Photocopies of "A Bit of Britain" (a) advertising contract with Plaintiff of 2/25/86, (b) copies of checks on 2/26/86 to Plaintiff and on 4/17/86 to Defendant corporation, (c) receipt from Defendant company for payment as Exhibits Number Eight herein.

(9) Copy of Plaintiff's letter to Defendant corporation and Karen Horn

advising of copyright notice, registration and future notice as Exhibit Number Nine herein.

D. That the corporate records, customer contracts, infringing copies and all records relating thereto are necessary for the protection of copyright and the records and proceeds are necessary for accounting and recovery under the federal statutes and as such are indispensable to just adjudication.

E. The restraining order prohibiting further infringement is necessary to prevent even further harm to Plaintiff.

Respectfully submited,

WILLIAM E. SEEKFORD, ESQ.
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